

A “retailer maintaining a place of business in Illinois” as described in 86 Ill. Adm. Code 150.201(i) is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL).

June 12, 2002

Dear Xxxxx:

This letter is in response to your letter dated April 1, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

We are requesting a Illinois Nexus Questionnaire be sent to us.

Our activities in Illinois are limited to the sales of water purification units, filters, and accessories by independent distributors located in Illinois. Orders and payments are send to our CITY/STATE office for processing.

Please send the questionnaire to the following address.

ADDRESS

Your assistance is greatly appreciated in handling our request.

Illinois does not have a nexus questionnaire. In the context of a General Information Letter, the Department is unable to make nexus determinations because the amount of information required to make that determination is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful to you in determining whether you are responsible to pay tax in Illinois.

An “Illinois Retailer” is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a “retailer maintaining a place of business in Illinois” is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on

behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Wagner, (1996), 171 Ill.2d 410.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

In your letter you state that independent distributors sell your products. The relationship between your company and the independent distributors will determine whether your company has nexus. If you sell your product to the independent distributors for resale and they then sell the product in Illinois, the independent distributor is the Illinois retailer and your company, based upon this contact alone would most likely not have nexus with Illinois. However, if the independent distributors sell the product in Illinois on your behalf, then you are the retailer and you would have nexus with Illinois requiring you to collect and remit tax on your sales.

When a seller of tangible personal property registers with and obtains a Certificate of Registration from the Illinois Department of Revenue, it gains the right to sell at retail its products in the state of Illinois and in turn, assumes the duty to file returns and remit the tax collected on those sales. In the event a seller registered with the Department sells its products to an independent distributor for the purpose of resale, a Certificate of Resale must be obtained from the distributor in order to be relieved of the duty to collect and remit the sales tax on the products purchased for resale. The requirements for obtaining Certificates of Resale are provided in the enclosed copy of 86 Ill. Adm. Code Section 130.1405.

Manufacturers, importers or wholesalers may, however, enter into an "agency agreement" with the Department, whereby they register, file returns and remit sales tax on behalf of their independent distributors. Please find enclosed a copy of 86 Ill. Adm. Code Section 130.550, the regulation explaining how to enter into such an agreement. Under this type of agreement, the manufacturers, importers or wholesalers sell their products to the distributors and collect tax from the distributors based on the selling price of the products to the ultimate consumer. The tax therefore, is not calculated on the selling price to the distributor, but rather the applicable tax is calculated and collected based on the selling price of the product at retail. Under such an agreement, the

independent distributor is not required to register with the Department, file a return and remit the tax because those duties have been assumed by the manufacturer, importer or wholesaler.

An independent distributor that agrees to allow the manufacturer, importer or wholesaler to register and remit taxes on its behalf should keep a copy of the agency agreement as proof that it is relieved from the duty to register and remit taxes on products sold at retail. A distributor may opt out of the agency agreement where the distributor wishes to register and remit its own taxes.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.